IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 72 OF 2005.

Mr. Alex D'Costa,
son of Joaqum D'Costa,
resident of Dicarpale,
Salcete, Goa.
Presently in Sub-Jail, Sada,
Vasco-da-Gama, Goa.
Through his brother and next friend
Mr. Pobres D'Costa,
r/o Dicarpale, Salcete, Goa. .... Applicant.

Versus

1. S T A T E
(Represented by the Public Prosecutor).

2. The Police Inspector,
Maina – Curtorim Police Station,
South Goa Police H.Q. Building,
Margao, Salcete, Goa. ... Respondents.

Shri Bosco Roberts, Advocate for the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the Respondents.

CORAM: N. A. BRITTO, J.

DATE: 5th MAY, 2005.

ORAL ORDER:

Heard Shri B. Roberts, learned Advocate on behalf of the Applicant-accused in Sessions Case No.43/04 now pending before the learned III Addl. Sessions Judge at Margao and Shri Sardessai, the learned

P.P.

2. The said accused was arrested on 12.8.04 in Crime No.59/04 under Sections 302, 394 I.P.C. and since then has been in custody. The accused moved the Sessions Court twice for bail and his applications were rejected by Order dated 2.9.04 and 2.12.04. The third application came to be rejected by the First Addl. Sessions Judge by Order dated 27.12.04 and the fourth application came to be rejected by Order dated 21.4.05 of the learned III Addl. Sessions Judge, Margao.

3. There are several grievances made on behalf of the said accused by learned Advocate Shri Roberts. One of them is that the learned Sessions Judge took as many as 27 days in deciding his second bail application. As far as this aspect is concerned, this Court has time and again observed that bail applications should be disposed of as early as possible and in this context in case any reference is required to be made, then the case of ***Khemlo S. Sawant v. State (2001 (2) G.L.T. 111)*** could be referred to.

4. The second grievance of the learned Advocate Shri Roberts is that although the case was committed on 2.12.04, till date not a single witness has been examined.

Shri Sardessai has submitted that the trial of this case has been fixed today and two witnesses have been summoned and served and will

be examined in the trial today in the afternoon. Therefore nothing survives of the said grievance.

5. The third grievance of Shri Roberts is that the accused ought to have been admitted to bail on medical grounds and it is his submission that at the time of passing of the Order dated 27.12.2004 by the learned first Addl. Sessions Judge, Margao an affidavit of the brother of the accused was filed stating that the accused was suffering in jail due to the injuries suffered by him and his health was deteriorating. Shri Roberts submits that at that stage no medical papers were produced, but the learned Addl. Sessions Judge proceeded to reject the bail application even without calling for the medical reports of the accused from the judicial custody at Sub-Jail, Sada, Vasco. Shri Roberts also submits that although medical case papers were produced before the learned III Addl. Sessions Judge before passing of the Order dated 21.4.05 the learned Addl. Sessions Judge proceeded to dismiss the application because according to the learned Addl. Sessions Judge there was no change in the events of the case.

6. As far as the denial of bail to the accused because the accused is involved in a serious offence, in my view that conclusion cannot be faulted with. It appears that although there are no eye witnesses to the

incident of murder, it appears that the gold ornaments belonging to the deceased were recovered at his instance from a goldsmith and some of the gold ornaments were recovered from his residence, on the basis of which certainly inferences could be drawn that the accused was involved in a serious offence for which punishment would be one of the extreme severities. However, it appears to me that the case of the accused to be admitted to bail on medical grounds has been brushed aside by the learned Addl. Sessions Judges by their respective Orders dated 27.12.04 and 21.4.05.

7. I, therefore, hereby order the learned III Addl. Sessions Judge, Margao before whom the trial of the case is now pending to consider whether the accused would be entitled to bail on medical grounds, and if necessary, by calling for and perusing his medical case papers from the Judicial Lock-up, Vasco-da-Gama. For that purpose the accused shall file a fresh application before the learned III Addl. Sessions Judge, Margao and the learned Addl. Sessions Judge on such application being filed shall dispose of the same within a week therefrom.

8. Application disposed of on the above terms.

sl. **N. A. BRITTO, J.**